



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

SPINE HOSPITAL OF SOUTH TEXAS
18600 N. HARDY OAK BLVD
SAN ANTONIO, TX 78258

DWC Claim #:

Injured Employee:

Date of Injury:

Employer Name:

Insurance Carrier #:

Respondent Name

DALLAS NATIONAL INSURANCE CO

Carrier's Austin Representative Box

20

MFDR Tracking Number

M4-05-2084-01

MFDR Date Received

NOVEMBER 16, 2004

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Please find enclosed the request for Medical Dispute Resolution from Spine Hospital of South Texas. The date of service involved in this dispute was from 8/20/2004 for treatment regarding the above-referenced claimant's work-related injury. The Carrier, CONTINENTAL CASUALTY, denied payment with payment exception code(s)"F" on the explanation of benefits ... The Carrier improperly denied or reduced payment in this instance pursuant to Texas Administrative Code Sections 133 and 134. The payment exception code(s) provided on an explanation of benefits indicate payment pursuant to the Texas Administrative Code and the Commission instructions. However, the Carrier has not provided payment pursuant to the TWCC Fee Guidelines in effect at the time of the date of service. Specifically, TWCC Rule 134.301(c)(6) requires payment of 75% of total audited charges for billed charges that reach the stop-loss threshold of \$40,000 ... The Carrier failed to provide an adequate response to the request for reconsideration. Based upon the initial denial presented by the Carrier, it is the requestor's position that the Carrier is required to pay the entire amount in dispute."

Requestor's Position Summary Dated August 19, 2011: "Our original MDR appeal requested to be paid at 75% of billed charges according to Texas Administrative Code 134.401 for Acute Inpatient Hospital Fee Guidelines for hospital admissions exceed the \$40,000. minimum threshold. We are asking that the entire admission be paid at 75% of billed charges based on unusual extensive services required during the admission. The medical records had not been previously submitted with this MDR appeal. It is worth noting that on July 14, 2004 our patient Doug Claussen had decompressive lumbar laminectomy of the L4-5 and L5-S1, bilateral L4-5, L5-S1 medial facetectomies with bilateral L5 and S1 nerve root foraminotomies with subarticular decompression-neurolysis, L5-S1 subtotal discectomy, L5-S1 posterior lumbar interbody fusion with BMP, L5-S1 bilateral PCA cage insertion and Legacy pedicle instrumentation, L5-S1 bilateral poster lateral intertransverse fusion with auto graft BMP, harvesting of auto graft and duramorph. This was indeed surgical admission not a medical admission which would require more intensive and detailed work with the patient due to wound care, wound care training and physical therapy in order to get the patient discharge ready."

Amount in Dispute: \$21,053.27

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated December 1, 2004: "A review of the documentation indicates the Requestor seeks additional reimbursement for in-patient surgical services delivered to the Claimant between July 14, 2004 and July 16, 2004. Respondent audited the bill and reduced it to \$19,183.90. On July 14, 2004, Claimant underwent spinal surgery. She remained with Requestor until July 16, 2003 – without ICU/CCU days. Based on the performed procedure, as well as the length of stay under the Acute Care Inpatient Hospital Fee Guidelines, Requestor invoked the Stop-Loss provision of Commission Rule 134.401 and sought reimbursement of \$53,649.56. Respondent properly paid \$19,183.90 based upon the documentation submitted by Requestor using the denial code "F" – reduced per Fee Guidelines ... Moreover, Requestor's charges must comply with the statutory requirement set forth in the Texas Labor Code Section 413.011(d), which mandates that "Guidelines for medical service fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control."

Response Submitted by: Downs Stanford, P.C.

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
July 14, 2004 through July 16, 2004	Inpatient Hospital Services	\$21,053.27	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- 001 – All reductions are in accordance with the medical fee schedule as per the Texas Workers' Compensation Act
- S06 – Reimbursed at cost + 10% per guidelines

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the

requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$53,649.56. The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its position statement asserts that "Our original MDR appeal requested to be paid at 75% of billed charges according to Texas Administrative Code 134.401 for Acute Inpatient Hospital Fee Guidelines for hospital admissions exceed the \$40,000. minimum threshold. We are asking that the entire admission be paid at 75% of billed charges based on unusual extensive services required during the admission." The requestor presupposes that it is entitled to the stop loss method of payment. As noted above, the Third Court of Appeals in its November 13, 2008 rendered judgment that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services." The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services in comparison to similar surgeries; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).
3. In regards to whether the services were unusually costly, the third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to demonstrate the particulars of the admission in dispute that constitute unusually costly services in comparison to similar surgeries; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." The length of stay was two days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of two days results in an allowable amount of \$2,236.00.
 - 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed one unit of Thrombin –JMI 20,000 units Spray Kit at \$578.70/unit, for a total charge of \$578.70. The requestor did not submit documentation to support what the cost to the hospital was for Thrombin –JMI 20,000 units Spray Kit. For that reason, reimbursement for these items cannot be recommended
 - The division notes that 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)."

Review of the requestor's medical bills finds that the following items were billed under revenue code 0278 and are therefore eligible for separate payment under §134.401(c)(4)(A) as follows:

Rev Code	Itemized Statement Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
278	Implant Supply (Med-tech Distributing) 12 x 2	12 x 26 Telamon VBS	2 at \$ 2,398.64 ea	\$4,797.28	\$5,277.01
278	Implant Supply (Med-tech distributing) 40MM	5.5 X 40mm Prebent Rod	2 at \$326.97 ea	\$653.94	\$719.33
278	Implant Supply (Med-tech distributing) 7.5 X	7.5 x 40MM Screw	2 at \$1,174.67 ea	\$2,349.34	\$2,584.27
278	Implant Supply (Med-tech distributing) 7.5 X	7.5 X 35MM Screw	2 at \$1,174.67 ea	\$2,349.34	\$2,584.27
278	Implant Supply (Med-tech distributing) brea	Break off screw	4 at \$142.72 ea	\$570.88	\$627.97
278	Implant Supply infuse bone graft kit medium	Infuse bone graft medium kit	1 at \$4,400.00 ea	\$4,400.00	\$4,840.00
278	Implant Supply Mastergraft 5cc Vial	85% B-TCP/15% HA, 5CC Vial	1 at \$241.25 ea	\$241.25	\$265.38
TOTAL ALLOWABLE				\$16,898.23	

The division concludes that the total allowable for this admission is \$2,236.00 + 16,898.23. The respondent issued payment in the amount of \$19,183.90. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to discuss and demonstrate that the disputed inpatient hospital admission involved unusually extensive, and unusually costly services. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Signature	Medical Fee Dispute Resolution Officer	11/6/12 Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**
Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.